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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MARK A. SEATS, et al.,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fifth Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court should devote its limited time to entertain the issue of retroactivity when, in fact, *Gates* does not make new law but simply clarifies existing law.
2. Whether this Court should extend its valuable time on settled issues of law, since the absence of probable cause in this case is demonstrated by substantial evidence.

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RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

Respondent appealed from an order by the Circuit Court, Marion County suppressing evidence seized from the home of petitioners during a search conducted pursuant to a search warrant. The Illinois Appellate Court reversed the order and remanded. The opinion of the Appellate Court of Illinois, Fifth District, is reported as *People v. Seats*, 121 Ill. App. 3d 637, 460 N.E.2d 110 (5th Dist. 1984). The Illinois Supreme Court denied Petition for Leave to Appeal in an unpublished order No. 59876 on June 5, 1984.

JURISDICTION

Petitioner invoked this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as explained more fully below, Respondent submits that no good reason exists for this Court to exercise its extraordinary and discretionary jurisdiction and grant the petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. IV

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the . . . .

U.S. Const. Amend. XIV

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

The facts relevant to the issues raised by petitioner are adequately set forth in the opinions of the courts below and need not be restated at length here. Respondent directs this Court's attention to the argument portion of this brief, where the pertinent facts are fully discussed.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO GENUINE ISSUE OF RETROACTIVITY SINCE *GATES* DOES NOT MAKE NEW LAW, IT ONLY CLARIFIES EXISTING LAW. ENTERTAINING THIS QUESTION WOULD BE A WASTE OF THE COURT'S PRECIOUS TIME.

As early as 1965, the Court in *United States v. Ventresca*, 380 U.S. 102, 85 S.Ct. 741 (1965) held that in establishing probable cause for a warrant to issue, the courts should use a common sense approach and to view the facts in a rational fashion.

Although the court in *Ventresca* was applying the *Aguilar v. State of Texas*, 378 U.S. 108, 84 S.Ct. 1509 (1964) test, it still observes that reviewing courts must not lose sight of practical considerations. In essence, the *Ventresca* court presaged the law explained in *Illinois v. Gates*, ... U.S. ....., 103 S.Ct. 2317 (1983) in 1965.

Gates is not new law. Courts have consistently relied on the "totality of the circumstances" in determining whether probable cause existed. The court would empha-

size the two elements of "basis of knowledge" and the "credibility of the source", while relying in whole on *all* the circumstances in the affidavit for a warrant.

The petitioners seek to avoid the effect of the *Gates* decision by arguing that it should not be applied retroactively, since it represents a fundamental shift in doctrine and construes an entirely new rule of law. This is clearly erroneous.

There is nothing to support the petitioners' argument limiting the applicability of *Gates* for the benefit of petitioners.

The *Gates* court retained reliance on the informant's veracity, reliability and basis of his knowledge in a fashion similar to the *Aguilar/Spirelli* test. However, the Court went on to say

> We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case . . . *Gates*, 103 S.Ct. 2317, 2327.

Essentially this Court said it would continue applying the *Aguilar/Spinelli* test, but in addition to the other relevant factors. This is not new law, it is just more explicit.

If the basis for a warrant is sufficient under *Gates*, it also is sufficient under *Aguilar/Spinelli*.

II.

THE COURT SHOULD NOT EXPEND ITS VALUABLE TIME ON SETTLED ISSUES OF LAW SINCE THE PROBABLE CAUSE IN THIS CASE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The police are entitled to rely on an anonymous tip from an ordinary citizen with no motive to lie. The Court in *Illinois v. Gates*, ... U.S. ....., 103 S.Ct. 2317 (1983) held that an informant's veracity, reliability and basis of his knowledge are highly relevant to the totality of the circumstances. *Gates*, 2327. However, the Court went on to say

> We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case. *Gates*, 2327, 29.

The caller in the instant case said *she* observed the petitioner enter their trailer with the proceeds of a burglary. Therefore, it is from her own personal knowledge. (R. C.6).

Next, we ask, was her information reliable? Officer Jones testified that he received the information from what he believed to be a concerned citizen. Based on this fact, the information was presumed to be reliable. *In re Boykin*, 39 Ill.2d 617, 237 N.E.2d 460 (1968).

> We presume that the information from an anonymous caller is true in the absence of information to the contrary since there is nothing to gain from furnishing false information.

Next, the officer conducted a preliminary investigation prior to the obtaining of the search warrant. He also verified that there was a burglary and that the petitioners were not practicing medicine.

Based on all the foregoing information contained in the affidavit the judge had sufficient basis for a finding of probable cause. A magistrate should consider all the information appearing in the affidavit before deciding probable cause exists. *Franks v. Delaware,* 438 U.S. 154, 98 S.Ct. 2674 (1978).

The petitioner also asserts that an anonymous letter in and of itself is not sufficient for a finding of probable cause. This was true in the *Gates* case; however, the court in *Gates* did not know if the information relayed to the police was from the informant's own personal knowledge, or whether it may lack reliability. That is not the case here; in this case the caller's telephone tip stated that she saw the petitioners carrying a medical bag in their residence (Suppression Hearing, p. 17, lines 4-6). The Court in *Draper v. United States,* 358 U.S. 307, 79 S.Ct. 329 (1959) held that seemingly innocent activity can become suspicious in light of any anonymous tip and that the aura of suspicion may then ripen into probable cause.

There is probable cause under the *Gates* "totality of circumstances" test. There are several factors which enhance the credibility of the anonymous informant's tip. First, Sandoval is a very small community and most of its residents know each other. Second, the burglary of the medical center was not common knowledge. The concerned citizen informing the police probably knew where the black medical bag came from and also knew the petitioners. These facts coupled with the fact that Officer Jones knew the petitioners and knew they were not involved in the practice of medicine and that they lived within three blocks of the burglary would lead even the most reasonable person to believe a crime was committed and that the petitioners may have been involved. There is no doubt that under the *Gates* test there was probable cause shown in the affidavit.

The Court in *Gates* explained the implication of the totality test as follows:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed. (Citations omitted.) *Gates*, 103 S.Ct. at 2332.

With respect to information from an unidentified source, the Court noted that informant's tips come in many shapes and sizes from many different types of persons and that "one simple rule will not cover every situation." *Gates*, 103 at 2328-29.

Regarding the problem of applying the two-prong test of *Aguilar* to information provided by ordinary citizens, the Court commented that ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations. 103 S.Ct. at 2331.

In the instant case, the information not only satisfied the "totality of the circumstances" test of *Gates*, but also comported with the previous "two prong" test in *Aguilar/Spinelli.*

The information met the "basis of knowledge" prong in that it was personal knowledge. It satisfied the "underlying basis" test enunciated in *People v. Chriest*, 42 Ill. App. 3d 656, 356 N.E.2d 587 (5th Dist. 1976). And second, the information met the "credibility of the source" prong. From the information furnished, it was obvious she knew the petitioners, and the policy had no reason to distrust her. As the trial record indicated:

> OFFICER JONES: We figured it was a concerned citizen trying to help. (R. 19)

In Illinois, under *People v. Hester*, 39 Ill.2d 489, 237 N.E.2d 466, 481 (1968), the Court held the ordinary citizen as distinguished from the professional tipster is presumed to be reliable.

There is no need to establish a "track record" of reliability. *People v. McClellan*, 34 Ill.2d 572, 218 N.E.2d 97 (1966).

Moreover, to require a showing of the reliability of an ordinary citizen would be to engage in the unrealistically rigid approach condemned by the Court in *Gates*, 103 S.Ct. 2317, 2330 n.9.

Under *Gates*, we ask whether the magistrate made a practical, common sense decision considering all the circumstances. *Gates*, 2332.

This case is exactly what the *Gates* case contemplated, a set of circumstances all intermeshing to corroborate each other. The information indicated that the proceeds of the burglary could be found at the petitioners' trailer; it was based on personal knowledge of the informant, and was received only nine days after the burglary. The officer had no reason to doubt the caller's veracity. All the information, when considered collectively, was sufficient for the police to obtain a warrant. It would be nonfeasance on the officer's part to have ignored all the facts before him. The judge considering the foregoing facts obviously made an impartial and relatively simple decision—issue the warrant. There can be no doubt, in light of these facts, that under *Gates* there was probable cause.

CONCLUSION

The Appellate Court of Illinois was correct in applying the standards of *Illinois v. Gates*. The facts of this case satisfy the "totality of circumstances" test in *Gates*. This Honorable Court must deny a writ of certiorari.

Respectfully submitted,

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